UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

EMANUEL MITCHELL,)	
Plaintiff,))	
V.) Case No. CIV-19-40	-(
GEO GROUP, INC., et al.,)	
Defendants.)	

ORDER

This matter comes before the Court for review of the Report and Recommendation (Doc. No. 11) issued by United States Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Plaintiff, a state prisoner appearing pro se and proceeding *in forma pauperis*, brought this action under 42 U.S.C. § 1983, alleging violations of his constitutional rights. Judge Erwin recommends that Plaintiff's Complaint be dismissed on screening. *See* 28 U.S.C. §§ 1915A, 1915(e)(2)(B).

Plaintiff has not filed a written objection to the Report and Recommendation within the allotted time period.¹ Judge Erwin specifically informed Plaintiff of his right to object and the consequences of failing to do so. *See* R. & R. at 14-15. Upon review, the Court concludes that Plaintiff has waived further review of all issues addressed in the Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

¹ On June 13, 2019, the Court issued an Order extending Plaintiff's deadline to file an objection to June 27, 2019. *See* Doc. No. 15. The Court mailed a copy of this Order to Plaintiff's address of record, but the mailing was returned as undeliverable. *See* Doc. No. 16. It is Plaintiff's responsibility to ensure that his address of record is current by promptly notifying the Court of a change of address. *See* LCvR 5.4.

Accordingly, the Report and Recommendation entered on April 10, 2019 (Doc. No. 11) is ADOPTED, and this matter is DISMISSED² as further articulated therein.³ Plaintiff's Motion to Appoint Counsel (Doc. No. 14) is DENIED as moot.

IT IS SO ORDERED this 4th day of October, 2019.

CHARLES B. GOODWIN United States District Judge

² The Court declines to exercise supplemental jurisdiction over Plaintiff's state-law claims. *See Smith v. City of Enid ex rel. Enid City Comm'n*, 149 F.3d 1151, 1156 (10th Cir. 1998) ("When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.").

³ Although the Report and Recommendation recommends dismissal with prejudice of Plaintiff's individual-capacity "medical negligence" claim against Defendant Loper insofar as it is alleged under § 1983 rather than state law, the Court does not find that amendment would be futile and therefore dismisses this claim without prejudice. With sufficient allegations, a claim styled as medical negligence could be liberally construed as a claim of deliberate indifference to a serious medical need. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). Further, the Court finds that the official-capacity claims against Defendant Honaker should be dismissed without prejudice. As a state official, Defendant Honaker is not a "person" under § 1983 insofar as he is sued in his official capacity for damages, and Plaintiff has not stated a claim for any underlying constitutional violation for which he may obtain prospective relief. *See Hafer v. Melo*, 502 U.S. 21, 27 (1991); *Vann v. Okla. State Bureau of Investigation*, 28 F. App'x 861, 864 (10th Cir. 2001).